

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TIMOTHY ROYAL	§	
v.	§	CIVIL ACTION NO. 6:06cv218
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Timothy Royal, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his time computation. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Royal complained that he was convicted of unauthorized use of a motor vehicle in 1992, receiving a sentence of 15 years in prison. However, he says, he has not been given credit for all of his street time, and argues that he has met the criteria for return of some 40 months of street time.

The Magistrate Judge ordered the Respondent to answer Royal's petition and an answer was filed. The Respondent said that Royal has been paroled on two separate occasions; the first parole was granted on October 28, 1998, and was revoked on January 8, 2001, and then paroled on July 8, 2003, and revoked on August 16, 2005. On February 22, 2006, Royal filed an administrative time credit calculation dispute, which remains pending. He filed a state habeas corpus on February 9, 2006, challenging the denial of street-time credit from June of 2003 until June of 2005, but this petition was dismissed because Royal had not completed the administrative review process related to challenges to street-time credits before filing his state habeas petition.

The Respondent argues that Royal's claims concerning the 2001 revocation are barred by the statute of limitations and that his claims concerning the 2005 revocation have not been exhausted, and that his claims are without merit. Royal did not file a response to the answer.

On September 20, 2006, the Magistrate Judge issued a Report recommending that the petition be dismissed. The Magistrate Judge concluded that the statute of limitations has expired on Royal's claims involving the 2001 parole revocation, and that he has not exhausted his state remedies on his 2005 revocation. The Magistrate Judge noted that Royal filed a state habeas petition on February 9, 2006, but that this petition was dismissed, not on the merits but because it was filed before he sought administrative relief, as required by Tex. Gov. Code art. 501.0081. Finally, the Magistrate Judge recommended that the district court deny Royal a certificate of appealability *sua sponte*.

Royal received a copy of the Magistrate Judge's Report on September 25, 2006, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is DISMISSED with prejudice as to the Petitioner's claims involving the 2001 parole revocation, and DISMISSED without prejudice as to the claims involving the 2005 revocation. It is further

ORDERED that the Petitioner Timothy Royal is denied a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby
DENIED.

So ORDERED and SIGNED this 25th day of October, 2006.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**